

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No. 5982 of 2007

Abdus Salam Laskar

...Petitioner

-Versus-

Bangladesh and others

...Opposite Parties

Mr. Md. Tamizuddin, Advocate

õ for the petitioner

Mrs. Syeda Rabia Begum, A.A.G.

õ for opposite party No.1

Judgment on 6.3.2012

This Rule at the instance of the plaintiff-appellant was issued on an application under section 115 (1) of the Code of Civil Procedure to examine the legality of judgment and order dated 3.10.2007 passed by the Additional District Judge, Habiganj in Miscellaneous Appeal No.37 of 2003 dismissing the same on affirmation of order dated 15.7.2003 passed by the Senior Assistant Judge (in charge), Baniachong, Habiganj in Title Suit No.60 of 2001. By the said order the Senior Assistant Judge-in-charge rejected an application for temporary injunction filed by the plaintiff.

Petitioner Abdus Salam Laskar instituted Title Suit No.60 of 2001 in the Court of Senior Assistant Judge, Baniachang, Habiganj for declaration of title over 19.25 acres

of land as described in the schedule of the plaint. His case, in brief, is that the suit land originally belonged to defendant No.5 Dewan Nasrat Reza Waqf Estate. His (plaintiff's) father Taiyab Laskar took settlement of the suit land on 5th Bhadra, 1349 by way of *pattan* from the said Dewan Nasrat Reza Waqf Estate represented by its Manager Fazlur Rahim Chowdhury. An employee of the Waqf Estate named Abasi Kumar Chakravartee was the scribe of the said *pattan*. While in peaceful possession and enjoyment of the land, Taiyb Laskar died leaving behind the plaintiff and defendant Nos.6-10 as his heirs and successors. The plaintiff got the suit land in his share by an amicable settlement between the said heirs of late Taiyb Laskar. During S. A. and R. S. operation, the suit land was wrongly recorded as a *khash* land in the name of Government. The Government-officials took initiative to lease out the suit land and for that purpose fixed 9.8.2001 for holding auction, thus the cause of action for institution of the suit arose.

The plaintiff also filed an application under Order 39 rule 1 and 2 of the Code for temporary injunction restraining defendant-opposite party Nos.1-4 from disturbing him in peaceful possession and enjoyment of the suit land and leasing out the same to any other person.

Defendant-opposite party Nos.1-4 entered appearance and contested the application for temporary injunction by

filing a joint written objection denying the material allegations made therein. Their case, in brief, is that the suit land belongs to the Government. The S. A. and R. S. records in respect of the suit land were prepared in the name of Government and the lands against different plots therein were described as marshlands, namely, Chengra Beel, Choto Chengra Beel, Goal Beel and Kasma Beel. The Government has been managing and controlling the suit land for last forty-five years and leased out the same to different persons. As per provisions of sections 3 and 20 of the State Acquisition and Tenancy Act, all fisheries have been vested in Government. The plaintiff has no right, title, interest and possession over the suit land.

The Senior Assistant Judge (in charge), Habigonj heard the application and rejected the same by his order dated 15.10.2003 on the reasons that the suit land is a beel in nature and that the plaintiff did not produce any documents to show that defendant No.5 was owner of the suit land at any point of time. As per provision of section 20 (2) (Kha) of the State Acquisition and Tenancy Act, the land vested in Government.

The plaintiff preferred Miscellaneous Appeal No.37 of 2003 before the District Judge, Habigonj challenging the said order of rejection dated 15.10.2003. The Additional District Judge, Habigonj ultimately heard the appeal and dismissed

the same by his judgment and order dated 3.10.2007. The plaintiff-appellant moved in this Court with the instant civil revision against the said judgment of the appellate Court and obtained the Rule with an order of statusquo.

Mr. Md. Tamizuddin, learned Advocate appearing for the petitioner submits that the plaintiff-petitioner has been in continuous possession over the suit land, which he inherited from his father late Taiyab Laskar. Because of wrong recording of the suit land in the name of Government, he could not pay rent against the land, but for that reason it cannot be held that the petitioner is not in possession thereof. Both the Courts below failed to consider this aspect of the case and thereby committed error of law resulting in an error in decision occasioning failure of justice. Learned Advocate cannot, however, inform the Court whether the suit is still pending.

Mrs. Syeda Rabia Begum, learned Assistant Attorney General for Bangladesh, submits that during S. A. and R. S. operation the suit land was duly recorded as *khas* in the name of Government. The plaintiff-petitioner did not take any step for correction of the record in his name. Now his claim of possession therein cannot be reasonably accepted. The Government leased out the land to different persons and has been collecting lease money from the lessees for a long period. The Courts below concurrently held the petitioner to

be not in possession of the suit land and observed that he failed to produce any single document to support his claim of possession. Such concurrent findings should not be interfered with by the revisional Court unless there is gross non-consideration of documents or other materials on record.

I have considered the submissions of the learned Advocates for both the parties and gone through the revisional application as well as the impugned orders. It does not appear that the petitioner submitted any piece of document to substantiate his claim of possession in the suit land and therefore, I do not find any illegality in rejecting his application for temporary injunction.

In the result, the Rule is discharged. The order of statusquo passed earlier at the time of issuance of the Rule is vacated.

Communicate a copy of the judgment.